BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KATHLEEN A. ROLL	)	
Claimant	)	
VS.	)	
	)	Docket No. 143,343
CLARK MANUFACTURING, INC.	)	
Respondent	)	
AND	)	
	)	
UNITED STATES FIDELITY &	)	
GUARANTY COMPANY	)	
Insurance Carrier	)	

ORDER

The Appeals Board has considered the respondent's request for review of the Award of Administrative Law Judge John D. Clark dated October 21, 1994.

APPEARANCES

Claimant appeared by and through her attorney, Marsh D. Doctor of Wellington, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Thomas D. Herlocker of Winfield, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopts the stipulations listed in the Award of October 21, 1994. On appeal, the parties have made the additional stipulation that respondent has paid claimant 210 weeks of temporary total disability compensation at the rate of $210.68 per week for a total of $44,242.80 and has paid medical expenses of $14,375.92 and vocational rehabilitation costs of $1,938.09.

ISSUES

The Administrative Law Judge found claimant entitled to permanent partial general body disability benefits based upon an average of the functional impairment ratings. The respondent and insurance carrier appeal that finding by the Administrative Law Judge and request the Appeals Board to consider the following issues:

(1) Whether claimant's alleged accidental injury arose out of and in the course of her employment with the respondent;

(2) Nature and extent of claimant's disability, if any; and

(3) Whether claimant is entitled to unauthorized medical and future medical expense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds that the claimant has failed to meet her burden to prove she has suffered personal injury by accident arising out of and in the course of her employment with the respondent.

Claimant started work for respondent August 14, 1989, and worked there continuously for five (5) months until January 22, 1990. She was an aircraft parts inspector. Her job duties included measuring and inspecting parts. She used calipers, height gauges, general scales, and visual inspection. Parts were removed from a box and placed on a table for inspection. The weight of the parts she inspected varied from less than an ounce to about four (4) or five (5) pounds each. They were then placed back in a box and sent out on a dolly. She worked forty-four (44) hours a week, nine (9) hours Monday through Thursday, and eight (8) hours on Friday. Claimant testified that she handled from one thousand to three thousand (1,000-3,000) parts per day, however, the respondent produced evidence showing that the actual number of parts handled per day was much smaller.

According to claimant, she was in great health when she started working for respondent. She had no problems with her arms, wrists, or hands. Shortly after Thanksgiving 1989, she noticed an unusual sensation in her left arm. The pain was in her left elbow and generated to her wrist and shoulder. She went to her family doctor December 15, 1989, and he diagnosed tennis elbow. She did not report this condition to her employer. On January 5, 1990, claimant testified that she moved a wooden crate full of aircraft parts about fifteen feet (15') from the back doors to her table, using her left arm, and experienced a searing, burning pain. She did not report the injury and finished working her normal shift. The following Monday she reported the injury and requested medical treatment.

She saw Dr. J. M. Baker on January 9, 1990. He diagnosed tennis elbow and prescribed physical therapy. She was subsequently referred to Dr. Mark Melhorn who diagnosed tendinitis. He ultimately performed surgery on both wrists and elbows. She was given permanent impairment ratings by Dr. Melhorn on July 23, 1990, and released to return to regular work with permanent restrictions of thirty-five (35) pounds lifting and no gripping on a frequent basis, and she may lift larger amounts on an infrequent or occasional basis. Dr. Melhorn testified that his impairment rating was for pain and loss of strength but with normal motion. Both ratings are to the level of the arm. Nowhere in Dr. Melhorn's records, reports, or testimony did he relate the injury to a work-related accident. He simply was not asked his opinion in that regard.

Several of claimant's co-workers and her supervisor testified in this case. All disputed the claimant's version of how she suffered personal injury by accident on January 5, 1990. Donna Brinkmeyer worked next to claimant. She testified that her desk was closest to the box which claimant allegedly moved. She could have touched the box with her foot from her chair. She stated that she did not see claimant move the box all day. The box was never in any position other than right by her desk from the time it was brought in by Mike Allton until it was removed by Mike Allton and Arlen Baker later that day. Donna Brinkmeyer testified that she never left the workroom except with the claimant and that the claimant was never out of her sight in the workroom. Claimant could not have moved the box without her seeing it.

Mike Allton is the worker that put the box in the workroom where claimant worked and assisted Arlen Baker in removing the box from that room. He testified that when he went in to claimant's workroom to remove the box, it was in the same place where he had originally placed it.

Arlen Baker is quality control manager for the respondent and on January 5, 1990, he was claimant's supervisor. He testified that he counseled claimant about her work right after lunch on that date. He told her that her work was below average and that she needed to shape up. Claimant, according to Mr. Baker, did not take the counseling very well and ran out of his office crying. Donna Brinkmeyer testified that when claimant came out of that meeting with Arlen Baker she slammed the door and said that she would get him, she would make them all pay.

The parties stipulated into evidence the independent medical examination report of Dr. Ernest R. Schlachter. His report contains the only medical opinion relating claimant's bilateral upper extremity conditions to her employment with respondent. However, the history Dr. Schlachter was given included that claimant was required to lift weights at work up to fifty to sixty (50-60) pounds, that she had an onset of symptoms on December 15, 1989, while pulling parts and developed a burning sensation in her hands and wrists, and that she continued to work through January 5, 1990, with gradually increasing pain. The Appeals Board finds this history is not consistent with the evidence. As such, the opinion of Dr. Schlachter relating her condition to injuries received in the course of her employment is unreliable and of little value.

> "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." K.S.A. 1989 Supp. 44-501(a).
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> "'Burden of proof' means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." K.S.A. 1989 Supp. 44-508(g).

It is not enough for the claimant to have a condition which results in permanent impairment while she is employed. In order to find that personal injury by accident arose out of the employment, there must be some causal connection between the injury and the employment. Bennett v. Wichita Fence Co., 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992). In the case before us, the Appeals Board finds that claimant has failed to meet her burden of proving personal injury by accident arising out of and in the course of her employment with the respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark entered in this proceeding on October 21, 1994, should be, and hereby is, reversed, and that workers compensation benefits to the claimant should be and hereby are denied.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Marsh D. Doctor, Wellington, KS
Thomas D. Herlocker, Winfield, KS
John D. Clark, Administrative Law Judge
George Gomez, Director